

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA

:

Appellee

:

:

:

v.

:

No. [REDACTED]

:

:

:

[REDACTED] [REDACTED] [REDACTED]
Appellant

:

MOTION TO RESCIND BRIEFING SCHEDULE,
VACATE JUDGMENT, AND REMAND FOR RESENTENCING

The Appellant, by and through undersigned counsel, hereby moves, pursuant to Federal Rules of Appellate Procedure, Rule 27, to rescind the briefing schedule, to vacate his sentence, and to remand his case to the district court for resentencing. In support thereof, undersigned counsel states as follows:

1. At the time of Appellant's Rule 11 hearing, he admitted only those facts that satisfied the elements of the offenses to which he pled guilty and invoked his right of silence as to any additional facts.

2. When the district court sentenced Appellant, the court followed Circuit precedent at the time and applied the Guidelines in a mandatory fashion, finding facts beyond those to which the Defendant admitted.

3. The Supreme Court held in United States v. Booker, 125 S. Ct. 738 (2005) that the imposition of enhancements under the

Federal Sentencing Guidelines, based on facts (other than as to prior convictions) found by a judge, was a violation the Sixth Amendment and that the proper remedy was for the Guidelines to be considered advisory, not mandatory.

4. Recently, this court held in United States v. Hughes, - F.3d -, No. 03-4172 (4th Cir. Mar. 16, 2005) (on panel reh'g), that a district court commits prejudicial plain error warranting notice when the sentence it imposes results from a Sixth Amendment Booker violation. Hughes, slip op. at 13-14 (citation omitted).

5. This sentencing issue is the only issue the Appellant would pursue on appeal.

6. Undersigned counsel has consulted Assistant United States Attorney Sandra J. Hairston who advises that the government is not opposed to this Motion.

For all these reasons, the Appellant hereby moves to rescind the briefing schedule, to vacate his sentence, and to remand his case to the district court for resentencing in accordance with Hughes.

Respectfully submitted this the 23rd day of July, 2005.

THOMAS N. COCHRAN
Assistant Federal Public Defender

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CERTIFICATE OF SERVICE

I certify that I have served the foregoing Motion to Rescind Briefing Order by United States mail or by hand delivery upon:

Ms. Sandra J. Hairston
Assistant United States Attorney
Middle District of North Carolina
Post Office Box 1858
Greensboro, North Carolina 27402

This the 23rd day of July, 2005.

THOMAS N. COCHRAN
Assistant Federal Public Defender